

Memorandum of Decision: 04-20200408
Gross Retail Tax Refund
For the Years 2019 and 2020

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department agreed that Indiana Nonprofit Organization was entitled to a refund of sales tax on purchases from online retailers even though the retailers classified the charges as "estimated tax."

ISSUE

I. Gross Retail Tax - Refund of Sales Tax Paid by Nonprofit Organization.

Authority: IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-5-25; IC § 6-8.1-1-1; *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); [45 IAC 2.2-5-10\(a\)](#); Sales Tax Information Bulletin 10 (September 2020); *Tax Foundation*, <https://taxfoundation.org/state-sales-tax-jurisdictions-in-the-us-2020>.

Taxpayer argues that it is entitled to a refund of sales tax paid on purchases of tangible property from two online retailers.

STATEMENT OF FACTS

Taxpayer is an Indiana non-profit organization which purchased items from two online retailers. Taxpayer purchased items from Computer Retailer and purchased items from Nation-Wide Retailer. Both retailers charged Taxpayer tax on the price Taxpayer paid for the items.

Taxpayer submitted the Indiana Department of Revenue ("Department") a form GA-110L ("Claim for Refund") seeking a refund of tax paid on the purchase of the items. The Department responded in an October 2020 letter granting the claim in part and denying the claim in part.

The Department denied a portion of the claim on following grounds:

After review of the documents DOR found that taxpayer did not take into account that estimated tax is not a recognizable tax provided by DOR.

In other words, invoices from the Computer Retailer and Nation-Wide Retailer indicated that Taxpayer was charged "estimated tax" on each of the purchases and the Department concluded that "estimated tax" was not one of Indiana's listed taxes.

Taxpayer disagreed with that portion of the Department's response denying the refund and submitted a protest to that effect. An administrative hearing was conducted, and this Memorandum of Decision results.

I. Gross Retail Tax - Refund of Sales Tax Paid by Nonprofit Organization.

DISCUSSION

The issue is whether Taxpayer has established that the "estimated taxes" charged by Computer Retailer and Nation-Wide Retailer constitute sales tax and that, as a result, Taxpayer is entitled to an additional refund of that tax.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in

Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. IC § 6-2.5-2-1(b).

In general, purchases of tangible personal property are subject to sales tax. [45 IAC 2.2-5-10\(a\)](#). Tangible personal property means personal property that: (1) can be seen, weighed, measured, felt, or touched; or (2) is in any other manner perceptible to the senses. IC § 6-2.5-1-27. Tangible personal property also includes electricity, water, gas, steam, and prewritten computer software. *Id.*

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a).

In effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Nonetheless, Indiana law provides a specific exemption set in IC § 6-2.5-5-25(a) which provides:

Transactions involving tangible personal property, accommodations, or service are exempt from the state gross retail tax, if the person acquiring the property, accommodations, or service:

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property, accommodations, or service to carry on or to raise money to carry on its not-for-profit purpose; and
- (3) is not an organization operated predominantly for social purposes.

As explained in Sales Tax Information Bulletin 10 (September 2020), [20201028-IR-045200542NRA](#), "Application of Sales Tax to Nonprofit Organizations":

Organizations, as previously described, that are registered with the Indiana Department of Revenue as nonprofit organizations may purchase exempt from Indiana sales and use tax tangible personal property primarily used in carrying out the nonprofit purpose of the qualified organization.

See also Sales Tax Information Bulletin 10 (December 2018).

IC § 6-2.5-5-25 like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Nevertheless, the Department is well aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991).

The Department was correct when it pointed out that "estimated tax" is not one of the specifically designated "listed taxes" under IC § 6-8.1-1-1 which the Department is charged with administering. However, "state gross retail" is one of those listed taxes.

The Department acknowledges the difficulties multi-state retailers experience in calculating, charging, and collecting sales tax from customers located across the United States.

[S]ellers face a vast landscape of rates and jurisdictions that can make compliance a challenge. There are over 11,000 standard sales tax jurisdictions in the United States in 2020, according to software company Vertex Inc. Each jurisdiction has a distinct aggregate sales tax rate based on a unique combination of factors, including sales taxes levied by taxing authorities at the state, county, city, and district levels. *Tax Foundation*, <https://taxfoundation.org/state-sales-tax-jurisdictions-in-the-us-2020> (Last visited January 11, 2021).

In the case of Computer Retailer, Taxpayer was able to obtain a revised invoice clearly indicating that the "estimated tax" charged on the original invoice did, indeed, constitute Indiana sales tax. In the case of Nation-Wide Retailer, a review of the invoices establishes that Taxpayer was consistently being charged a seven percent "estimated tax to be collected."

Because Taxpayer purchased tangible personal property which was delivered to its Indiana location, because Indiana does not have county, city, or district level sales taxes, and because the estimated tax charged equals

seven percent, the Department agrees that Taxpayer has met its burden of establishing that the amounts charged by Computer Retailer and Nation-Wide Retailer constitute sales tax and that non-profit Taxpayer is presumptively entitled to a refund of those amounts.

FINDING

Taxpayer's protest is sustained.

January 12, 2021

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